

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN RE: CASE NO. 03-40127

MILDRED IRENE NELSON

Debtor

STACIA L. YOON, Trustee

Plaintiff

vs.

MILDRED IRENE NELSON

Defendant

PROC. NO. 05-4020

DECISION AND ORDER
ON MOTION FOR SUMMARY JUDGMENT

At Fort Wayne, Indiana, on November 18, 2005.

By this adversary proceeding, the trustee seeks to revoke the debtor's discharge, because the debtor has refused to comply with the court's order to turnover a sum of money to the trustee. The matter is before the court on the trustee's motion for summary judgment and the debtor's response thereto.

The trustee asks the court to revoke the debtor's discharge pursuant to § 727(d) of the Bankruptcy Code, which authorizes revocation if, among other things, the debtor has refused to obey a lawful order of the court. 11 U.S.C. §§ 727(d)(3); 727(a)(6). The order to which the trustee refers is an order granting a motion for turnover of funds which directed the debtor to turnover \$1,280 to the trustee. Although, it is not disputed that the debtor has failed to pay the amount required, that is not sufficient to prove the trustee's case.

The trustee's motion incorrectly equates the failure to comply with the court's order with a refusal to do so. A refusal to obey is not the same as a failure to do so. A failure to obey is simply non-compliance for any reason whatsoever – good, bad or indifferent. A refusal to obey is narrower and connotes a degree of culpability. One refuses to obey if there is the ability to comply, but one chooses not to – in other words, a meaningful choice between two alternatives. If there is no alternative to non-compliance, it is not a refusal. In this, it is much like civil contempt – there is no contempt if compliance with the order was not possible. See, Matter of Jarrell, 129 B.R. 29, 33 (Bankr. D. Del. 1991); United States v. Dowell, 82 B.R. 998, 1003 (Bankr. W.D. Mo. 1987).

Summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Bankr. P. Rule 7056(c); Fed. R. Civ. P. Rule 56(c). The facts before the court reflect only a failure to comply, not a refusal to do so. Consequently, although the court is not presented with any factual issues, the undisputed facts fail to demonstrate that the plaintiff is entitled to judgment as a matter of law.

The trustee's motion for summary judgment is DENIED.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court